

1 **ADAM H. SPRINGEL, ESQ., NBN 7187**
2 **SPRINGEL & FINK LLP**
3 2475 Village View Drive, Suite 250
4 Henderson, Nevada 89074
5 Telephone: (702) 804-0706
6 Facsimile: (702) 804-0798
7 Email: aspringel@springelfink.com

8 **SHAWN KHORRAMI, SBN 180411**
9 **ROBERT DREXLER, SBN 119119**
10 **BEVIN ALLEN, SBN 221936**
11 **KHORRAMI, POLLARD & ABIR LLP**
12 444 S. Flower St., Thirty-Third Floor
13 Los Angeles, CA 90071
14 Telephone: (213)506-6000
15 Facsimile: (213)596-6010

16 *Attorneys for Defendants*
17 Scott J. Ferrell, Michael Campos
18 Thomas Hess, Sara Jordan
19

20 **UNITED STATES DISTRICT COURT**
21 **FOR THE DISTRICT OF NEVADA**

22 METABOLIC RESEARCH, INC., a Nevada
23 Corporation,

24 Plaintiff,

25 vs.

26 SCOTT J. FERRELL, MICHAEL CAMPOS,
27 THOMAS HESS, SARA JORDAN, DOES
28 I-V, inclusive, DOE ENTITIES VI-X,
inclusive,

Defendants.

Case No.: 2:09-CV-02453-JCM-PAL

**DEFENDANTS' NOTICE OF APPEAL
TO THE NINTH CIRCUIT COURT OF
APPEALS**


Complaint Filed: November 16, 2009

1 **NOTICE IS HEREBY GIVEN** that SCOTT J. FERRELL, MICHAEL CAMPOS,
2 THOMAS HESS and SARA JORDAN, Defendants in the above-entitled case, hereby appeal
3 to the United States Court of Appeals for the Ninth Circuit from the Order denying
4 Defendant's Special Motion to Dismiss pursuant to *Nev. Rev. Stat. Ann.* § 41.650, *et seq.*
5 entered in this action on April 30, 2010, attached hereto.

6 Pursuant to Ninth Circuit Rule 3-2, attached is a Representation Statement that
7 identifies all parties to the action, along with the names, addresses and telephone numbers of
8 their respective counsel.

9
10 Dated: 5/27/10

KHORRAMI, POLLARD & ABIR, LLP

11
12 By: 

13 SHAWN KHORRAMI
14 ROBERT J. DREXLER, JR.
15 BEVIN ALLEN
16 ballen@kpalawyers.com
17 444 S. Flower St., Thirty-Third Floor
18 Los Angeles, CA 90071
19 Telephone: (213)506-6000

20 ADAM H. SPRINGEL, ESQ.,
21 SPRINGEL & FINK LLP
22 2475 Village View Drive, Suite 250
23 Henderson, Nevada 89074
24 Telephone: (702) 804-0706
25 Facsimile: (702) 804-0798
26 Email: aspringel@springelfink.com

27 *Attorneys for Defendants*
28 Scott J. Ferrell, Michael Campos
Thomas Hess, Sara Jordan

RULE 3-2 REPRESENTATION STATEMENT

Defendants in this action, Scott J. Ferrell, Michael Campos, Thomas Hess, and Sara Jordan are represented by the following counsel:

SHAWN KHORRAMI
ROBERT DREXLER
BEVIN ALLEN
KHORRAMI, POLLARD & ABIR LLP
444 S. Flower St., Thirty-Third Floor
Los Angeles, CA 90071
Telephone: (213) 596-6000
Facsimile: (213) 596-6010
Email: ballen@kpalawyers.com
Leads Counsel for Defendants

ADAM H. SPRINGEL, ESQ
SPRINGEL & FINK LLP
2475 Village View Drive, Suite 250
Henderson, Nevada 89074
Telephone: (702) 804-0706
Facsimile: (702) 804-0798
Email: aspringel@springelfink.com

Additional Counsel for Defendants


Plaintiff in this action, Metabolic Research, Inc. is represented by:

Beverly Salhanick, Esq.
BEVERLY SALHANICK., ESQ. P.C.
2001 S. Jones, Suite I
Las Vegas, Nevada 89146
Telephone: (702) 227-0787
Fax: (702) 579-9965

Dated: 5/27/10

KHORRAMI, POLLARD & ABIR, LLP

By:


SHAWN KHORRAMI
ROBERT J. DREXLER, JR.
BEVIN ALLEN
444 S. Flower St., Thirty-Third Floor
Los Angeles, CA 90071
Telephone: (213) 596-6000
Facsimile: (213) 596-6010
Email: ballen@kpalawyers.com

ADAM H. SPRINGEL, ESQ.,
SPRINGEL & FINK LLP
2475 Village View Drive, Suite 250
Henderson, Nevada 89074
Telephone: (702) 804-0706
Facsimile: (702) 804-0798
Email: aspringel@springelfink.com

Attorneys for Defendants

1 **BEVERLY SALHANICK, ESQUIRE**
2 **BEVERLY SALHANICK, ESQUIRE P.C.**
3 Nevada Bar No. 002786
4 2001 S. Jones, Suite I
5 Las Vegas, Nevada 89146
6 (702) 227-0787
7 (702) 579-9965 fax
8 Beverly@Salhanicklaw.com
9 Attorney for Plaintiff

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

11	METABOLIC RESEARCH, INC.,)	Case No.: 2:09-CV-02453-JCM-PAL
12	a Nevada corporation,)	
13	Plaintiff,)	ORDER RE: DEFENDANTS' SPECIAL
14	vs.)	MOTION TO DISMISS AND
15)	COUNTERMOTION FOR STAY
16	SCOTT J. FARRELL, MICHAEL)	
17	CAMPOS, THOMAS HESS, SARA)	
18	JORDAN, DOES I-V, inclusive,)	
19	DOE ENTITIES VI-X, inclusive,)	
20	Defendants.)	

21 Defendants' Special Motion to Dismiss and Plaintiff's
22 Countermotion for Stay having come on regularly for hearing, Beverly
23 Salhanick, Esquire, appearing for Plaintiff, Bevin Allen, Esquire of
24 Khorrami Pollard & Abir, LLP and Jennifer A. Carrollo, Esquire of the
25 law firm of Springel & Fink, LLP, the Court having reviewed the
26 pleadings and papers on file and having heard the arguments of
27 counsel, and good cause appearing,

28 THE COURT FINDS:

1. Nevada case law is controlling.

1 2. That N.R.S. 41.650 sets out the definition of good faith in
2 matters regarding the Nevada Anti-SLAPP statute.

3 3. That N.R.S. 41.627 defines good faith communication in
4 furtherance of right to petition in three distinct situations.

5 4. That the demand letter at issue does not fall within any of
6 the situations described in N.R.S. 41.627

7 5. That based on John v Douglas County School District, 125
8 Nev. Adv. Op. No. 55, 219 P.3d 1276 (2009), headnote 6, the Nevada
9 Anti-SLAPP statute does not apply.

10 6. That the litigation privilege is governed by Nevada law and
11 does not apply in this instance.

12 7. That there is no basis for a stay of this proceeding.

13 IT IS THEREFORE ORDERED that the Defendants' Special Motion to

14

15

16

17

18

19

20

21

22

23

24

25

26


27

28

1 Dismiss is denied.

2 IT IS FURTHER ORDERED that Plaintiff's Countermotion for Stay is
3 denied.

4 DATED this 30th day of April, 2010.

5
6 
7 UNITED STATES DISTRICT COURT JUDGE

8 Submitted by:

9 BEVERLY SALHANICK, ESQ., P.C.

10

11 /s/ Beverly Salhanick
12 Beverly Salhanick, Esquire
13 Nevada Bar #002786
14 2001 S. Jones, Suite I
15 Las Vegas, Nevada 89146
16 Attorney for Plaintiff

17 Counsel submitting this document certifies as follows:

18 I have delivered a copy of this proposed order to all counsel who
19 appeared at the hearing, any unrepresented parties who appeared ant
20 the hearing, and each has approved or disapproved the order, or failed
21 to respond, as indicated below:

22 Bevin Allen, Khorrami Pollard & Abir, LLP-disapproved

23 Jennifer A. Carrollo, Springel & Fink-disapproved
24
25
26
27
28

T:\WPDOCS\M.DIR\Metabolic Research\Ferrell\NV Litigation\M to Dismiss\Order Denying Motion to Dismiss

CERTIFICATE OF SERVICE

I herby certify that a true and correct copy of the foregoing **DEFENDANTS' NOTICE OF APPEAL TO THE NINTH CIRCUIT COURT OF APPEAL** was filed and served electronically on May 27, 2010, via CM/ECF. Notification of this filing will be sent automatically to all counsel of record including defendants' counsel as follows:

Beverly Salhanick, Esq.
Beverly Salhanick, P.C.
2001 South Jones, Suite I
Las Vegas, NV 89146
Telephone: (702) 227-0787
Facsimile: (702) 579-9965
Email: beverly@salhanicklaw.com

KHORRAMI POLLARD & ABIR LLP

By: 
DEBRA KNIGHTEN, Legal Assistant

SHAWN KHORRAMI
ROBERT J. DREXLER
MATT C. BAILEY
mbailey@kpalawyers.com
BEVIN E. ALLEN
444 S. Flower St., 33rd Floor
Los Angeles, California 90071
Telephone: (213) 596-6000
Facsimile: (213) 596-6010

ADAM H. SPRINGEL, ESQ., NBN 7187
aspringel@springelfink.com
SPRINGEL & FINK LLP
2475 Village View Drive, Suite 250
Henderson, Nevada 89074
Telephone: (702) 804-0706
Facsimile: (702) 804-0798

Attorneys for Defendants
Scott J. Ferrell, Michael Campos
Thomas Hess, Sara Jordan